

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Katherine O'Connor	Team: Team # 1	CCRB Case #: 200701549	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 01/29/2007 12:10 AM	Location of Incident: Amsterdam Avenue & W. 177th Street	Precinct: 34	18 Mo. SOL 7/29/2008	EO SOL 7/29/2008	
Date/Time CV Reported Tue, 01/30/2007 8:10 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 02/01/2007 11:39 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Gregory Pekera	04870	919546	PBMN TF
2. POM Miroslav Maric	10128	932957	PBMN TF

Officer(s)	Allegation	Investigator Recommendation
A.SGT Gregory Pekera	Abuse: Sgt. Gregory Pekera stopped the car in which § 87(2)(b) and § 87(2)(b) were occupants.	
B.SGT Gregory Pekera	Discourtesy: Sgt. Gregory Pekera spoke obscenely and/or rudely to § 87(2)(b) § 87(2)(b) and § 87(2)(b)	
C.SGT Gregory Pekera	Abuse: Sgt. Gregory Pekera frisked § 87(2)(b) and § 87(2)(b)	
D.SGT Gregory Pekera	Abuse: Sgt. Gregory Pekera searched § 87(2)(b) and § 87(2)(b)	
E.POM Miroslav Maric	Abuse: PO Miroslav Maric threatened the employment status of § 87(2)(b)	
F.POM Miroslav Maric	Abuse: PO Miroslav Maric frisked § 87(2)(b)	
G.POM Miroslav Maric	Abuse: PO Miroslav Maric searched § 87(2)(b)	
H.SGT Gregory Pekera	Abuse: Sgt. Gregory Pekera searched the car in which § 87(2)(b) § 87(2)(b) and § 87(2)(b) were occupants.	
I.SGT Gregory Pekera	Abuse: Sgt. Gregory Pekera damaged § 87(2)(b) s property.	

Synopsis

On January 29, 2007 at approximately 12:10am, § 87(2)(b) was driving with two friends, § 87(2)(b) and § 87(2)(b) when Sgt. Gregory Pekera of the Manhattan North Auto Larceny Division pulled him over for allegedly failing to signal when changing lanes [**Allegation A**]. The stop occurred at the intersection of Amsterdam Avenue and W. 177th Street in Manhattan. After determining to stop the vehicle, Sgt. Pekera witnessed § 87(2)(b) lean forward in his seat, and this action caused him to suspect that § 87(2)(b) was hiding a weapon. (Sgt. Pekera's partner, PO Miroslav Maric, claimed to have witnessed § 87(2)(b) make furtive movements as well, but he described them as § 87(2)(b) reaching toward his waist area, and stated he did not make this observation until he had approached the passenger side of the car). Sgt. Pekera and PO Miroslav Maric, approached the vehicle and began questioning the occupants. As they were doing so, Sgt. Pekera and PO Maric allegedly smelled marijuana coming from the interior of the vehicle. Sgt. Pekera asked § 87(2)(b) if he had any drugs in the vehicle, and allegedly stated, "I mean it, even a fucking bag of weed" [**Allegation B**]. After § 87(2)(b) denied he had been smoking, Sgt. Pekera instructed him to exit the vehicle, and after he had done so, Sgt. Pekera frisked [**Allegation C**] and searched [**Allegation D**] § 87(2)(b) § 87(2)(b). PO Maric then instructed § 87(2)(b) to exit the vehicle, as well. When § 87(2)(b) refused, PO Maric told him, "Don't let your friend here lose his job," indicating to § 87(2)(b) [**Allegation E**]. When § 87(2)(b) exited the car, PO Maric frisked and allegedly searched him [**Allegations F and G**]. Sgt. Pekera asked § 87(2)(b) to exit the vehicle, and as § 87(2)(b) was doing so, he told Sgt. Pekera § 87(2)(b). To this, Sgt. Pekera allegedly replied, "We're not on the same job, you're a fucking § 87(2)(b) [**Allegation B, cont.**]. Sgt. Pekera frisked and searched § 87(2)(b) [**Allegations C and D, cont.**], calling him a "fucking § 87(2)(b) repeatedly as he did so. After all three males had gotten out of the car, Sgt. Pekera searched the interior of the vehicle for weapons [**Allegation H**], as he suspected § 87(2)(b) could have hidden a weapon when he made his furtive movements earlier. In searching the car, Sgt. Pekera lifted and damaged § 87(2)(b)'s passenger side airbag panel [**Allegation I**]. Following the vehicle search, § 87(2)(b) claimed that Sgt. Pekera told him and his friends that they were "full of shit" and that they were "bullshitting" them regarding their denials that they had smoked marijuana [**Allegation B, cont.**]. Sgt. Pekera and PO Maric then left the scene—they did not issue any summonses to any of the car's occupants. § 87(2)(b) and § 87(2)(b) then left the scene. It was shortly after they got back into the vehicle that § 87(2)(b) noticed the damaged airbag panel.

§ 87(2)(g)

Summary of Complaint

On January 29, 2007 at 1:32am, § 87(2)(b) filed a complaint with IAB, filed under log number 07-03824 (encl. 9a-b, encl. 11), on behalf of himself and two of his friends, § 87(2)(b) and § 87(2)(b). This complaint was forwarded to the CCRB on February 1, 2007 (encl. 10a-b). § 87(2)(b) § 87(2)(b) was interviewed at the CCRB on February 21, 2007 (encl. 12a-f). § 87(2)(b) is a § 87(2)(b) year-old black male § 87(2)(b). § 87(2)(b) § 87(2)(b) provided the following statement to the CCRB:

On January 29, 2007 at approximately 12:10am, § 87(2)(b) was riding in a car with two friends, § 87(2)(b) and § 87(2)(b). § 87(2)(b) was driving (his car was described as "a mini SUV"), § 87(2)(b) was seated in the front passenger seat, and § 87(2)(b) was in the rear driver side seat. The three

of them were on their way back from a recording studio in Westchester County—§ 87(2)(b) § 87(2)(b) and § 87(2)(b) handle the business aspects of § 87(2)(b). § 87(2)(b) had just dropped his son off in upper Manhattan, and they were driving back to Brooklyn, where § 87(2)(b) lives. At the time they were driving, there was some traffic on the road, but it was not congested. § 87(2)(b) did not recall § 87(2)(b) making any traffic infractions or going over or under the speed limit. At one point, they noticed an unmarked police vehicle (a dark Crown Victoria) behind them flashing its lights. § 87(2)(b) pulled over immediately at the intersection of Amsterdam Avenue and W. 177th Street. The police vehicle pulled up behind them and parked, and two male officers exited and approached either side of the car. The one who approached the driver side was identified as having the last name “Bakara,” shield number 4870 (identified through investigation as Sgt. Gregory Pekera of the Manhattan North Auto Larceny Division). Sgt. Pekera was described as a white male, 5’7” to 5’8”, 190 lbs., between 33 and 37 years of age. The other officer (identified through investigation as PO Miroslav Maric, also of the Manhattan North Auto Larceny Division) was a white male, about 5’7”, about 180 lbs., between 25 and 30 years of age. Both were wearing winter ski caps and plainclothes with NYPD “raid jackets” (windbreakers) over them. § 87(2)(b) rolled down his window, and Sgt. Pekera asked him if he had any weapons or contraband in the vehicle. § 87(2)(b) replied that there was nothing in the car. § 87(2)(b) asked Sgt. Pekera why he’d been stopped, but he did not respond. Then, § 87(2)(b) turned to PO Maric and asked why they had been stopped. PO Maric replied, “You’re not the driver, so shut up.” Sgt. Pekera then explained that he and PO Maric had seen § 87(2)(b) change lanes without signaling. § 87(2)(b) explained in his interview that for the past mile before they had been pulled over, § 87(2)(b) had been driving in the same traffic lane. When they explained this to the officers, Sgt. Pekera stated that he had seen them cut in front of another vehicle.

Sgt. Pekera instructed § 87(2)(b) to step out of his vehicle and § 87(2)(b) complied. Sgt. Pekera proceeded to frisk § 87(2)(b) by patting him down. § 87(2)(b) did not know if Sgt. Pekera reached into § 87(2)(b)’s pockets—he stated that he did not really pay attention to § 87(2)(b)’s frisk because he was focused on PO Maric, who was questioning § 87(2)(b). § 87(2)(b) removed his § 87(2)(b) identification card and held it up for PO Maric to see, telling him that he worked § 87(2)(b). PO Maric looked at the card, and then leaned toward § 87(2)(b) and said, “Why didn’t you tell me earlier?” Then, PO Maric instructed § 87(2)(b) to step out of the car, as well. § 87(2)(b) protested, saying that he did not know why the car had been stopped. PO Maric told § 87(2)(b) “Don’t let your friend lose his job,” indicating to § 87(2)(b) (§ 87(2)(b) did not mention PO Maric making this threat during his IAB statement). Hearing this, § 87(2)(b) became worried because according to police guidelines, if he § 87(2)(b) were to get arrested, he would be automatically fired § 87(2)(b). § 87(2)(b) leaned forward and told § 87(2)(b) to listen to PO Maric and do what he said. § 87(2)(b) exited the vehicle and PO Maric proceeded to frisk him, as well. § 87(2)(b) saw him pat down his body, but he did not know if he reached into his pockets. By this time, Sgt. Pekera had finished frisking § 87(2)(b) and had escorted him to the rear of the vehicle. When § 87(2)(b) was finished being frisked, he was told to stand behind the rear bumper of the car with § 87(2)(b). Then, Sgt. Pekera instructed § 87(2)(b) to “get the hell out of the car.” § 87(2)(b) stated this in both his IAB and CCRB statements. Later in his CCRB statement, § 87(2)(b) revised this to say that Sgt. Pekera never used the word “hell,” and just said, “Get out the car”). As he was exiting, § 87(2)(b) showed Sgt. Pekera § 87(2)(b) identification card. Sgt. Pekera asked him what the card was § 87(2)(b). § 87(2)(b) replied, “No, sergeant, I’m a § 87(2)(b).” Sgt. Pekera said, “We’re not on the same job, you’re a fucking § 87(2)(b).

§ 87(2)(b) put the identification card back in his wallet and after he did so, Sgt. Pekera turned him around and pushed him chest-first against § 87(2)(b)’s vehicle—he did not push him forcefully. He then frisked and searched § 87(2)(b) saying, “You’re just a fucking § 87(2)(b) repeatedly as he did so. He patted him down, and then lifted his pant legs to see if he had anything under them. He also lifted § 87(2)(b)’s jacket and shirt and examined his waist area, exposing his skin. Sgt. Pekera reached into § 87(2)(b)’s jacket and pants pockets which contained a wallet, a small tape-recorder and a CD. Sgt. Pekera did not remove these items. In all, the frisk and search lasted between 30 and 50 seconds. (In his statement to IAB, § 87(2)(b) stated that when he asked Sgt. Pekera if he was supposed to be searching him, Sgt. Pekera replied, “Shut the fuck up.” He did not mention this exchange during his statement to the CCRB). During the frisk and search, § 87(2)(b) asked Sgt. Pekera for his name and shield information. Sgt. Pekera stated a name, but § 87(2)(b) was unable to understand it. When he finished, Sgt. Pekera brought § 87(2)(b) to the rear bumper and instructed him to sit with § 87(2)(b) and § 87(2)(b). While PO

Maric stood facing the three males and the rear of the car, Sgt. Pekera proceeded to search § 87(2)(b)'s vehicle. § 87(2)(b) realized this when he heard what sounded to be somebody moving various things around inside the vehicle. When he and the other two males tried to turn around to see what was happening, PO Maric told them, "Don't turn around." § 87(2)(b) did manage to get a glimpse of Sgt. Pekera's body inside the back seat area of the vehicle, but he could not tell what part he was searching. After about two to four minutes, Sgt. Pekera walked to the back of the vehicle and told § 87(2)(b) and § 87(2)(b) "Get back in the car." The three of them complied—both of the driver side doors had been left open. When § 87(2)(b) tried to get back into the rear, driver side seat, he saw that the driver's seat had been moved back during the course of Sgt. Pekera's search, and he was unable to fit his body into the seating area. When § 87(2)(b) had his body partway inside the open, rear door, Sgt. Pekera pushed the door, as if to close it. Because his foot was still outside the car, the door closed on § 87(2)(b)'s foot, causing pain but no injury. When § 87(2)(b) asked Sgt. Pekera to "take it easy," Sgt. Pekera told him to "shut up" again.

Once § 87(2)(b) was inside the car, Sgt. Pekera closed the door and asked the three males for their identification. All of them provided identification. As they were handing them over, § 87(2)(b) told Sgt. Pekera that, § 87(2)(b) he was very disappointed with how he had handled the vehicle stop. Sgt. Pekera did not respond to his comment. At this point, § 87(2)(b) asked Sgt. Pekera again if he could have his name and shield information. He said, "I'll give it to you, grab a pen." He told § 87(2)(b) his shield number and gave the last name "Bakara." § 87(2)(b) wrote this down as he was told it. Sgt. Pekera and PO Maric then returned to his vehicle with the males' identification. After waiting for seven to ten minutes, the officers returned and handed back the identification cards. Sgt. Pekera said, "Have a nice day," and walked back to his car with PO Maric. They then drove away from the scene, and § 87(2)(b) drove away shortly after the officers did. The entire incident lasted 35-45 minutes. After they left the location, the car occupants noticed that § 87(2)(b)'s passenger-side airbag panel had been cracked open and damaged. It had not been damaged prior to Sgt. Pekera searching the car. When § 87(2)(b) was asked to explain whether he or the other vehicle occupants made any movements that could have been interpreted by the officers as suspicious, he replied that he did not believe they did—to his recollection, they were sitting relatively still in the car before § 87(2)(b) was asked to exit. § 87(2)(b) did not seek medical treatment for his foot.

Results of Investigation

Victims' Statements

§ 87(2)(b) jointly filed the complaint in IAB log number 07-03824 with § 87(2)(b) (encl. 9a-b, encl. 13). He was interviewed on February 21, 2007 (encl. 14a-i). § 87(2)(g) He provided a follow-up phone statement on April 20, 2007 (encl. 15). § 87(2)(b) is a § 87(2)(b)-old white male § 87(2)(b) § 87(2)(g)

§ 87(2)(b) described his vehicle as a white, 1994 Toyota Rav 4. Prior to being pulled over, § 87(2)(b) had been driving slowly (about fifteen to twenty miles per hour) because he was looking for the entrance to the FDR Drive. After he had exited the car, Sgt. Pekera asked § 87(2)(b) if he had any drugs in the vehicle. He qualified his question by saying, "I mean it, even a fucking bag of weed." (In his statement to IAB, § 87(2)(b) stated Sgt. Pekera told him, "even a bag of weed," and did not make any profanity allegations). § 87(2)(b) stated he had no drugs in his vehicle. Sgt. Pekera proceeded to frisk § 87(2)(b) by patting him from his chest, to his waist area, moving to his groin area and then down his legs to his shoes. He also grabbed the outsides of § 87(2)(b)'s pants and jacket pockets. Then, Sgt. Pekera reached into § 87(2)(b)'s coat pockets—§ 87(2)(b) could not remember if he reached into his pants pockets, as well. When § 87(2)(b) was exiting the vehicle, § 87(2)(b) heard him identify himself to Sgt. Pekera as § 87(2)(b). Sgt. Pekera told him, "I don't give a fuck. § 87(2)(b) You don't work the same job as me." While § 87(2)(b) was sitting on his rear bumper, he turned his body and watched as Sgt. Pekera searched the vehicle by leaning into the front driver side door and opening the center console area. He then leaned down and appeared to look under the driver's seat—§ 87(2)(b) observed this through his rear windshield. He also saw Sgt. Pekera leaning into the rear seat area on the driver's side. After getting into his car, § 87(2)(b) asked Sgt. Pekera for his badge number, which he

provided, but because both § 87(2)(b) and § 87(2)(b) were speaking at the time he stated it, § 87(2)(b) could not hear what he said. § 87(2)(b) never did hear his badge number, and he never asked him for his name. § 87(2)(b) stated that neither he nor either of the other car occupants had smoked marijuana that night, nor had they been around anybody who had been smoking marijuana. § 87(2)(b) stated that the interior of his vehicle did not smell like marijuana at the time he was stopped. § 87(2)(b) never testified to hearing PO Maric make any kind of reference to § 87(2)(b)'s employment status, or state that he could lose his job § 87(2)(b) if he or the other occupants failed to cooperate.

At his interview, § 87(2)(b) provided photographs of his damaged airbag panel (encl. 14d-f). He stated that he took the photos of the panel on approximately February 5, 2007 (though the date could not be verified). The photos indicated that the front, passenger side airbag panel had been lifted about half-an-inch to three quarters of an inch upward, separating it from the dashboard at its lower, left corner. The right corner of the airbag was not lifted. The airbag itself was not exposed. The lifted panel was located directly above the glove compartment. § 87(2)(b) stated that he intends to file a notice of claim in hopes of being financially compensated for the damage his car sustained on January 29, 2007. As of April 20, 2007, § 87(2)(b) had still not filed a notice of claim, though he stated he still plans on doing so.

§ 87(2)(b)
§ 87(2)(b) jointly filed the complaint in IAB log number 07-03824 with § 87(2)(b) and § 87(2)(b) (encl. 9a-b, 16). He was interviewed at the CCRB on February 21, 2007 (encl. 17a-e). § 87(2)(b) is a § 87(2)(b)-old black male § 87(2)(b).
§ 87(2)(g)

When the officers first approached the vehicle, PO Maric asked § 87(2)(b) "Can I see some ID?" § 87(2)(b) removed his license from his wallet and handed it over to him right after he asked for it. § 87(2)(b) did not know what happened to § 87(2)(b) after he exited the vehicle because, right after he did, PO Maric told § 87(2)(b) "Now you need to get out of the car." After § 87(2)(b) exited, § 87(2)(b) told PO Maric through the car's open, rear window that he was § 87(2)(b). PO Maric replied by telling him, "You should have told me that a lot earlier." This was the extent of PO Maric's conversation with § 87(2)(b) at this time—§ 87(2)(b) never testified that PO Maric told him, "Don't let your friend here lose his job" in reference to § 87(2)(b). PO Maric proceeded to frisk and search § 87(2)(b) by patting § 87(2)(b) down over his chest, waist area and legs—§ 87(2)(b) stated he was frisked "from head to toe." PO Maric then reached into his front and back pants pockets, as well as the side pockets of his blue, down coat. At the time, § 87(2)(b) only had in his pockets his wallet, some gum and keys. PO Maric removed these items briefly, looked at them, and then placed them back inside the pockets. During the frisk and search, PO Maric asked § 87(2)(b) if he had any guns or marijuana in his pockets, asking him "Do you get high?" § 87(2)(b) replied that he did not. § 87(2)(b) believed PO Maric told § 87(2)(b) to exit the vehicle—he was unable to see if § 87(2)(b) was frisked or searched. While Sgt. Pekera searched the car, PO Maric asked the three males, "You sure some of you guys are not high? I can tell, your eyes are red. Where's the drugs at?" Sgt. Pekera also stated, "You guys are full of shit," and "You guys are bullshitting me" regarding their claims that they had not been using drugs. After handing back their identifications cards, Sgt. Pekera told § 87(2)(b) and the other two males, "You guys are still bullshitting us." At one point during the incident, § 87(2)(b) told Sgt. Pekera that he was § 87(2)(b) and Sgt. Pekera responded by saying, "You're not a damn cop. You don't work for the same force [as] me." § 87(2)(b) did not recall specifically when Sgt. Pekera said this, but he believed it was before § 87(2)(b) was asked to step out of the vehicle.

Officers' Statements

Sgt. Gregory Pekera, Manhattan North Auto Larceny Division

Sgt. Pekera was interviewed on April 3, 2007 (encl. 19a-c). On January 28, 2007, Sgt. Pekera worked from 5:13pm to 2:10am on January 29, 2007. He was working with PO Miroslav Maric and he was patrolling the 33rd and 34th Precincts. Sgt. Pekera was in uniform that night, and he was assigned to an unmarked, blue Crown Victoria, which he operated. He had no memo book entries (encl. 18a-b), and he provided the following statement:

On January 29, 2007 at approximately 12:10am, Sgt. Pekera and PO Maric were driving north on Amsterdam Avenue in moderate traffic when a vehicle passed them on their right side. After passing them,

the vehicle pulled three to four car lengths in front of them. Then, it began making several lane changes without signaling, about two to four changes in all over the course of four blocks. Sgt. Pekera determined that he would conduct a vehicle stop with the intention of issuing a summons due to the car's failure to signal during these lane changes. Immediately before the officers turned on their vehicle's lights and siren, Sgt. Pekera noticed the front passenger make some movements in his seat. Sgt. Pekera saw him lean forward and appear to look back toward the officers' car, and then turn to the driver and appear to speak to him. At one point, seconds before the vehicle pulled over, the front passenger bent over such that his body almost disappeared from Sgt. Pekera's view. Though he did not see the passenger's hands, to Sgt. Pekera, it appeared as if the front passenger reached down toward the middle floor area of the car. This caused Sgt. Pekera to become suspicious, as he believed the front passenger could have been hiding something. The officers' car was "right behind" the civilian vehicle when Sgt. Pekera made these observations, and there was nothing obstructing Sgt. Pekera's view of the vehicle occupants. The officers executed a vehicle stop by turning on their lights and sirens, and the civilian car pulled over immediately at W. 170th Street and Amsterdam Avenue, a dimly lit area with a park and several buildings surrounding it. Sgt. Pekera got out of his car and approached the driver's side and PO Maric walked to the passenger side of the car. There were three male occupants in the vehicle—a driver (identified as § 87(2)(b)) a front passenger § 87(2)(b) and a passenger sitting in the rear of the car § 87(2)(b). Sgt. Pekera asked § 87(2)(b) for his license, registration and insurance card. § 87(2)(b) did not immediately provide his materials, but instead, asked why he was being stopped. To Sgt. Pekera, § 87(2)(b) appeared "very agitated" and "hyper." Sgt. Pekera repeated that he provide his documents. § 87(2)(b) said, "This is ridiculous," but handed his documents to Sgt. Pekera after he had requested them "three or four" times total. While Sgt. Pekera was speaking to § 87(2)(b) PO Maric was speaking to the front passenger, but Sgt. Pekera could not hear what they were saying to one another.

Once Sgt. Pekera had § 87(2)(b)'s materials in hand, he detected a smell of burnt marijuana coming from the vehicle. Sgt. Pekera did not see any evidence of marijuana or other drug paraphernalia from where he was standing outside the car. He asked § 87(2)(b) and the other occupants if they had been smoking in the vehicle, or if they had been smoking or near people who were smoking earlier, and § 87(2)(b) replied that he and the other occupants had not. Then, Sgt. Pekera instructed § 87(2)(b) to exit his vehicle. Sgt. Pekera explained that the reason he asked § 87(2)(b) to step out of the car was because his suspicion had been raised by the front passenger's furtive movements. Though he had not seen § 87(2)(b) make any furtive movements, Sgt. Pekera was concerned that § 87(2)(b) could have had accessed the suspected weapon that the front passenger hid in the front seat area of the vehicle. § 87(2)(b) exited the car after Sgt. Pekera instructed him to do so. Sgt. Pekera had § 87(2)(b) place his hands on the roof of the car, and then he frisked § 87(2)(b) around his waistband and pants pockets for weapons. When asked if Sgt. Pekera noticed any bulges on § 87(2)(b)'s person prior to frisking him, Sgt. Pekera stated that he did not recall. In frisking his waist area, Sgt. Pekera felt a bulge which felt like a cell phone in § 87(2)(b)'s pocket, but he did not recover any contraband from him. The frisk lasted about ten seconds. Sgt. Pekera stated that he may have reached in § 87(2)(b)'s pocket to examine the cell phone (to ensure that it was, in fact, a phone and not a weapon). Though he could not recall specifically whether he did this, he said that if he had, he would have placed the phone right back in § 87(2)(b)'s pocket after determining what it was. When he found that § 87(2)(b) was unarmed, Sgt. Pekera escorted him to the rear of the vehicle, where PO Maric was standing. Then, Sgt. Pekera approached the rear, passenger door, opened it and instructed the individual sitting in the rear of the car (identified as § 87(2)(b)) to step out. Sgt. Pekera explained his reason for asking § 87(2)(b) to exit was the same as why he had § 87(2)(b) step out of the car—he was worried he could have reached for the weapon that the front passenger could have secreted. Initially, § 87(2)(b) refused to exit, and Sgt. Pekera had to ask him to exit "a couple times" before he complied.

As § 87(2)(b) was exiting, he told Sgt. Pekera that he was § 87(2)(b). When he asked § 87(2)(b) where he worked, § 87(2)(b) explained he § 87(2)(b) and handed him his § 87(2)(b) identification card. Sgt. Pekera asked § 87(2)(b) why he had not identified himself as such immediately after they had been pulled over. Sgt. Pekera also told § 87(2)(b) that he was not a police officer. § 87(2)(b) did not respond to Sgt. Pekera's question. Sgt. Pekera did not recall if he used any profanity toward § 87(2)(b) when speaking to him at this time, but he explained that he "[doesn't] speak that way" normally, and would not likely have used profanity toward any civilians. Once § 87(2)(b) was out of the car, Sgt. Pekera frisked him for weapons in the same manner as he had § 87(2)(b). Again, Sgt. Pekera stated that he may have reached into § 87(2)(b)'s

pockets to examine the contents (i.e. if he had “a hard wallet or a cell phone”), but he did not remember if he did. When he determined § 87(2)(b) was unarmed, he brought him to the rear of the vehicle. Following this, PO Maric escorted the front passenger (identified as § 87(2)(b)) to the rear of the vehicle while Sgt. Pekera stood by § 87(2)(b) and § 87(2)(b). PO Maric performed a frisk of § 87(2)(b) but Sgt. Pekera could not specify how he did this, as his attention was focused on § 87(2)(b) and § 87(2)(b) at the time. He did not know if PO Maric ever reached into § 87(2)(b)'s pockets, nor could he further describe the interaction between PO Maric and § 87(2)(b). Then, PO Maric escorted § 87(2)(b) to the rear of the vehicle, as well.

While PO Maric stood behind the rear of the car with the three vehicle occupants, Sgt. Pekera went back to the vehicle and searched the reachable areas within for weapons. His reason for searching the car was based on his suspicion that § 87(2)(b) had hidden something, possibly a gun or a knife, in the front passenger area of the car earlier when he “dip[ped] down” and made other furtive movements in his seat. When he reached the car, Sgt. Pekera “looked around the interior of the vehicle.” He leaned in through the driver’s door and looked under the driver’s seat, between the two front seats and inside the center console. He also searched the rear passenger side, where § 87(2)(b) had been sitting (based on his belief that § 87(2)(b) could have accessed the supposed weapon). He looked on the rear interior floor and under the rear seat. Following this, Sgt. Pekera went around to the front passenger seat and thoroughly searched the floor, the seat cushions and in the glove compartment. Though he did not find any weapons, Sgt. Pekera did find in the rear floor area a shopping bag with a small, tube-shaped pile of loose tobacco inside. The quantity and shape of the tobacco led Sgt. Pekera to believe that it had been emptied from a cigar (possibly with the intention of using the leftover cigar leaf to wrap marijuana for smoking). Other than this, Sgt. Pekera did not find anything else. PO Maric did not assist in the vehicle search.

After searching the car, Sgt. Pekera walked back to the rear of the vehicle and told the occupants that he had not found anything in the car. He explained to them that § 87(2)(b)'s furtive movements, combined with their collective agitation, made him think “something [was] going on.” He asked them to step back inside the vehicle, and the three males did so. After they had all gotten back in the car, Sgt. Pekera told § 87(2)(b) (the driver) to be careful driving and to not make so many lane changes without signaling. Sgt. Pekera determined that he would let them go with a warning rather than issuing § 87(2)(b) a summons for failure to signal. § 87(2)(b) requested Sgt. Pekera’s shield number, and Sgt. Pekera provided it. Following this, the civilians drove away from the scene and the officers left shortly thereafter. The entire incident lasted about fifteen minutes. Sgt. Pekera and PO Maric did not run any of the vehicle occupants’ identification for warrants. At no point did Sgt. Pekera or PO Maric ever use profanity toward the car occupants. Neither of them told the car’s occupants, “You’re full of shit” or “You’re bullshitting us” with respect to their denial that they had been smoking marijuana. Sgt. Pekera never witnessed PO Maric tell any of the car’s occupants, “Don’t let your friend here lose his job” in reference to § 87(2)(b) nor did he (Sgt. Pekera) make this statement to any of the occupants. Sgt. Pekera stated that he did not notice whether § 87(2)(b)'s car had airbag panels in it. At no point during the vehicle search did Sgt. Pekera lift any airbag panels on the passenger side of the dash board. He did not notice any cracks or openings in any part of the dash board or on any airbag panels inside the car. Sgt. Pekera stated that after the occupants got back inside the car, he may have closed one or more of the vehicle doors after them. However, he did not close any of the vehicle’s doors on any of the occupants’ legs while they were getting back inside the car. He stated that if he had, he did not do so on purpose, as he would have had no reason to forcibly close a door on any of their legs.

PO Miroslav Maric, Manhattan North Auto Larceny Division

On January 29, 2007, PO Maric made the following entries in his **memo book** (encl. 20a-c): “12:30am—10-93Q x 3, Amsterdam Avenue and McNally Place for CPW. Male black, § 87(2)(b) DOB § 87(2)(b). Second male black, § 87(2)(b) § 87(2)(b). Male white, § 87(2)(b) Neg. results on CPW.” He also completed **stop, question and frisk reports** for § 87(2)(b) (encl. 21a-b), § 87(2)(b) (encl. 22a-b) and § 87(2)(b) (encl. 23a-b). The three reports are identical to one another—all indicated that the three males were stopped at the intersection of McNally Plaza and Laurel Hill Terrace in Manhattan after PO Maric observed them for “two minutes.” The circumstances leading to the stop were given as “furtive movements,” and the frisk basis was listed as “furtive movements,” as well. The demeanors of all three males were “belligerent and irritated.” According to the reports, no searches were performed of any of the three males.

PO Maric was interviewed at the CCRB on April 3, 2007 (encl. 24a-c). On January 28, 2007, PO Maric worked from 5:30pm to 2:05am on January 29, 2007. He was working with Sgt. Gregory Pekera and was assigned to patrol. He was in uniform and was working in an unmarked patrol vehicle, which Sgt. Pekera operated. § 87(2)(g)

PO Maric specified that it was Sgt. Pekera's decision to conduct the vehicle stop. As PO Maric was approaching the passenger side door on foot, he saw the front passenger (identified as § 87(2)(b)) making some furtive movements toward his left side. He explained that he saw § 87(2)(b) turn toward the center console area and move his right arm toward his left waist area. § 87(2)(b) and the driver § 87(2)(b) also appeared to be talking to one another at this time, though he could not hear what they said. PO Maric made these observations through the car's front, passenger side window. He said that though the window was slightly tinted, he could clearly see § 87(2)(b) making these movements, as he was only standing "a foot" from the vehicle when he witnessed them. Prior to approaching the vehicle on foot, PO Maric had not witnessed § 87(2)(b) or any other occupants make any furtive movements. From where he was standing, PO Maric was unable to see any specifics of how Sgt. Pekera frisked § 87(2)(b). After § 87(2)(b) was frisked, PO Maric asked the front passenger § 87(2)(b) to exit the vehicle and frisked § 87(2)(b) for weapons, patting down his waist and chest areas only. PO Maric's reason for frisking § 87(2)(b) was because he had seen him make furtive movements while he was approaching the car, and this led him to believe he could have been armed. There was nothing else that added to his suspicion aside from these furtive movements. At no point did PO Maric reach into § 87(2)(b)'s pockets or inside any of this clothing. The frisk yielded negative results and lasted ten to fifteen seconds. As § 87(2)(b) was exiting the car, PO Maric heard § 87(2)(b) tell Sgt. Pekera that he § 87(2)(b). Other than § 87(2)(b) mentioning his job, there was no conversation had between either officer or § 87(2)(b) regarding his employment. PO Maric did not really see § 87(2)(b)'s frisk, as his attention was on § 87(2)(b) and § 87(2)(b) at the time. He did not see whether Sgt. Pekera reached into § 87(2)(b)'s pockets. PO Maric could not see specifically where inside the car Sgt. Pekera searched. He did not know if Sgt. Pekera lifted any of the car's airbag panels. (PO Maric learned from Sgt. Pekera that he did locate some small, empty Ziploc bags on the car's center console area, but they did not contain any narcotics or residue. PO Maric observed these bags later, after the occupants stepped back into their vehicle). PO Maric wrote down all of their names, dates of birth and addresses from their identification in his memo book. When questioned about the stop, question and frisk reports he completed, PO Maric explained that each of their frisks were based on the furtive movements made by § 87(2)(b) as his reaching motion toward the center console could have resulted in any of the car's occupants accessing the suspected weapon. PO Maric stated he never saw § 87(2)(b) pass anything to either § 87(2)(b) or § 87(2)(b) while they were inside the car.

Police Documents

The **stop, question and frisk log** from the 34th Precinct (encl. 25) indicated that on January 29, 2007, PO Maric filed reports for stopping and frisking § 87(2)(b) and § 87(2)(b). The suspected offense listed on the log for each of them was "CPW" (criminal possession of a weapon).

Civilian Record of Criminal Convictions

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officers' CCRB Histories

The present complaint is the first filed by § 87(2)(b) (encl. 8). Sgt. Pekera has not had any substantiated CCRB allegations filed against him during his ten-year tenure with the NYPD (encl. 6a-b). PO Maric, who has been employed with the NYPD for three years, has not had any substantiated allegations filed against him with the CCRB (encl. 7).

Conclusions and Recommendations

Officer Identification

§ 87(2)(b) identified Sgt. Pekera as having the last name "Bacara," and by his shield number. Neither Sgt. Pekera nor PO Maric disputed their presence at the scene. § 87(2)(g)

§ 87(2)(g) Each of the three males alleged that Sgt. Pekera used profanity when speaking to them. § 87(2)(b) claimed Sgt. Pekera asked him if he had “even a fucking bag of weed” in his car. § 87(2)(b) stated that Sgt. Pekera called him a “fucking cadet” numerous times throughout the incident. § 87(2)(b) alleged that Sgt. Pekera told him and his friends that they were “full of shit,” and that they were “bullshitting” them by saying they had not been smoking marijuana. § 87(2)(g)

Both § 87(2)(b) and § 87(2)(b) alleged that Sgt. Pekera frisked them, and Sgt. Pekera did not dispute that he did. § 87(2)(b) and § 87(2)(b) also alleged that Sgt. Pekera reached into their pockets while he frisked them, and Sgt. Pekera admitted that he may have done this, as well. § 87(2)(g)

As PO Maric was instructing § 87(2)(b) to exit the vehicle, § 87(2)(b) allegedly heard him say, “Don’t let your friend here lose his job,” § 87(2)(b) § 87(2)(g) § 87(2)(b) alleged that PO Maric frisked him, which PO Maric confirmed. He also alleged PO Maric reached into his pockets while he frisked him, § 87(2)(g)

§ 87(2)(b) and § 87(2)(b) all alleged that Sgt. Pekera searched § 87(2)(b)’s vehicle, and Sgt. Pekera did not deny that he did. § 87(2)(b) also alleged that Sgt. Pekera damaged his airbag panel during the search. § 87(2)(g)

Disputed and Undisputed Facts

It is **undisputed** that Sgt. Pekera stopped a vehicle containing § 87(2)(b) and § 87(2)(b) on January 29, 2007. He frisked and possibly searched both § 87(2)(b) and § 87(2)(b). PO Maric frisked § 87(2)(b) as well. Both officers agreed that the reasons they gave for frisking the individuals were due to the furtive movements made earlier by § 87(2)(b). Sgt. Pekera searched § 87(2)(b)’s vehicle for weapons he suspected § 87(2)(b) secreted prior to the stop. § 87(2)(g)

Assessment of Evidence

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

§ 87(2)(b) Sgt. Pekera testified that he only saw § 87(2)(b) make such movements immediately before the stop was executed. PO Maric stated that he witnessed § 87(2)(b) make these movements upon approaching the car on foot, and that he did not see him make any movements prior to this. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) testified that he was searched by PO Maric, which PO Maric denied doing. § 87(2)(g)

§ 87(2)(g)

Allegation A: Abuse of Authority: Sgt. Gregory Pekera stopped the car in which § 87(2)(b) and § 87(2)(b) were occupants.

Allegation B: Discourtesy: Sgt. Gregory Pekera spoke obscenely and/or rudely to § 87(2)(b) § 87(2)(b) and § 87(2)(b)

§ 87(2)(g)

Allegation C: Abuse of Authority: Sgt. Gregory Pekera frisked § 87(2)(b) and § 87(2)(b)

When asked to explain why he frisked both § 87(2)(b) and § 87(2)(b) Sgt. Pekera explained he feared that they could have been armed with a possible weapon. He based this assumption on the fact that he had earlier seen § 87(2)(b) make a leaning motion toward the floor of the vehicle, and that this motion led him to believe that he had secreted a weapon somewhere in the vehicle. According to Barry Kamins's New York Search and Seizure, "[An officer] is not permitted to *frisk* the driver or other occupants of a car unless he has a reasonable basis for suspecting that the individual is armed and may be dangerous" (encl. 1). § 87(2)(g)

§ 87(2)(g)

According to *NYPD vs. Dowd and Rose*, improper police action “is punishable misconduct if the officer acted with knowledge that he was acting improperly, acted without concern for the propriety of his actions, or acted without due and reasonable care that his actions be proper” (encl. 2a-b). § 87(2)(g)

Allegation D: Abuse of Authority: Sgt. Gregory Pekera searched § 87(2)(b) and § 87(2)(b) Kamins states that, under the “plain smell” doctrine, “the smell of marijuana, by itself, [is] sufficient to provide the officer with probable cause to search the car and its occupants” (encl. 3). Sgt. Pekera stated during his interview that he smelled marijuana coming from § 87(2)(b)’s vehicle after it was stopped, and PO Maric corroborated this. Sgt. Pekera admitted that he may have searched § 87(2)(b) and § 87(2)(b)’s pockets during their frisks—though he did not recall specifically if he did do this, he admitted to the possibility. § 87(2)(g)

Allegation E: Abuse of Authority: PO Miroslav Maric threatened the employment status of § 87(2)(b)

§ 87(2)(g)

Allegation F: Abuse of Authority: PO Miroslav Maric frisked § 87(2)(b)

PO Maric admitted to frisking § 87(2)(b) based on the fact that he had seen him turn toward the center console and reach toward his left, waist area. § 87(2)(b)’s motions gave PO Maric reason to believe he may have been armed. As noted in allegations (C) and (D), an officer may only frisk a civilian if they have reasonable suspicion that they are armed. § 87(2)(g)

Such motions are defined in Kamins’s New York Search and Seizure as “innocuous behaviors,” and cannot, standing alone, justify a reasonable suspicion that a suspect is armed (encl. 4a-b). § 87(2)(g)

§ 87(2)(g)

Allegation G: Abuse of Authority: PO Miroslav Maric searched § 87(2)(b)

§ 87(2)(g)

Allegation H: Abuse of Authority: Sgt. Gregory Pekera searched the car in which § 87(2)(b)

§ 87(2)(b) **and** § 87(2)(b) **were occupants.**

As explained in allegation D, an officer who smells marijuana coming from a vehicle is permitted to search that vehicle. § 87(2)(g)

Sgt. Pekera stated that he did so based solely on his suspicion that § 87(2)(b) had secreted a possible weapon somewhere in the car, based on § 87(2)(b)'s furtive movements. § 87(2)(g)

§ 87(2)(b) Kamins states that “In most cases where the suspect is questioned outside the car, New York courts have found a search to be unreasonable.... For example, the police will frequently observe an occupant of a vehicle making furtive motions near or towards a bag or container. If the police order the occupant out of the car and then search the bag or container, the search will be illegal” (encl. 5). § 87(2)(g)

Allegation I: Abuse of Authority: Sgt. Gregory Pekera damaged § 87(2)(b) **s property.**

§ 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: